

SERVICE DATE – JUNE 5, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1128X

ENERGY SOLUTIONS, LLC, D.B.A. HERITAGE RAILROAD CORPORATION—
ABANDONMENT EXEMPTION—IN ANDERSON
AND ROANE COUNTIES, TENN.

Decided: June 5, 2015

By petition filed on April 3, 2015, a Class III rail carrier, Energy Solutions, LLC (ES), d.b.a. Heritage Railroad Corporation, seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a line of railroad extending between a point of connection with Norfolk Southern Railway Company at or near Blair, Tenn. (milepost 0.0) and the end of the track at East Tennessee Technology Center at or near Oak Ridge, Tenn. (milepost 7.0), including approximately three miles of spur tracks in Anderson and Roane Counties, Tenn. (the Line). Because the proposed transaction raises questions about whether the relief ES seeks is appropriate, ES is directed to file supplemental information, as specified below, by July 6, 2015.

In its abandonment petition, ES claims that, in 2009, it acquired an easement from the United States Department of Energy (DOE) to operate the Line as a common carrier. ES states that it proposes to convert the Line from a regulated common carrier line to a private rail line by discontinuing operations over the Line as a common carrier and continuing rail operations over the Line in private carriage, transporting commodities pursuant to contracts with the shippers.

The petition raises two questions that will be addressed in turn.

First, it is unclear whether ES has an easement or, alternatively, a lease interest in the Line, as statements in ES's petition conflict with statements made in earlier licensing filings involving the Line. The Board needs supplemental information on the type of interest ES holds in the Line to determine whether this petition properly should seek abandonment or discontinuance authority in this case.

Specifically, in its petition, ES states that DOE owns the Line and that ES operates over it pursuant to an easement. In a 2003 Notice of Exemption, however, Heritage Railroad Corporation (HRC), the entity from which ES acquired its interest in the Line in 2009, had described the arrangement as a lease. Heritage R.R.—Lease & Operation Exemption—Rail Line of U.S. Dep't of Energy (HRC 2003 Verified Notice), FD 34372 (filed July 1, 2003) (describing DOE as “Lessor” and stating that “[b]y virtue

of a lease of the rail line from DOE, [HRC] alone is authorized to provide for the operation and maintenance of that rail line.”¹

In 2009, when ES sought authority to acquire the assets of HRC and operate the Line, ES stated that HRC operated the Line “pursuant to a perpetual easement for a railroad right-of-way granted by the owner of the land, [DOE].”² ES explained that the verified notice HRC filed in 2003 had “mistakenly stated” that HRC leased the land for the Line from DOE but that HRC actually operated the Line pursuant to a perpetual railroad right-of-way easement granted to HRC by DOE. Energy Solutions, LLC—Acquis. & Operation Exemption—Heritage R.R. (ES 2009 Verified Notice), FD 35288 (filed August 18, 2009). While the ES 2009 Verified Notice suggests that HRC owned the Line and that DOE owned only the land, ES’s instant petition states that DOE owns the Line.

As a result, it is unclear whether ES’s interest is an easement or lease. If a railroad’s property interest is in fact an easement, typically, the Board would extinguish the railroad’s authority to operate as a common carrier by granting an abandonment; in contrast, if the railroad’s interest is a lease, the Board would typically issue discontinuance authority instead.

To better understand this situation and to determine which type of authority is appropriate here, ES is directed to file supplemental information describing, in detail, the ownership of the Line and providing copies of relevant agreements with citations to the relevant portions. ES should explain whether its interest is a perpetual easement or a lease and should identify who owns the track material on the Line and who owns the real estate under the Line.

The second question raised by the petition involves private carriage. In its petition, ES states that it serves five shippers on the Line (excluding ES company traffic), and that ES plans to continue to serve all of the shippers on the Line pursuant to contract following the proposed abandonment of ES’s common carrier rail service. ES claims that such service would constitute private carriage. ES is directed to explain, citing to relevant precedent, why ES could serve multiple parties for hire on a contract basis after abandonment or discontinuance authority is consummated and why such service should be considered private carriage.

To ensure that those affected are aware of ES’s plans for the Line, ES is directed to serve a copy of the petition for exemption on DOE and each of the existing shippers on the Line within five days of the service date of this decision and certify to the Board that it has done so.

¹ HRC 2003 Verified Notice 3. Notice of this exemption was served on July 23, 2003, and published on July 25, 2003.

² ES 2009 Verified Notice 2. Notice of this exemption was served and published on September 3, 2003.

It is ordered:

1. ES is directed to file, by July 6, 2015, the supplemental information described above.
2. ES is directed to serve a copy of its petition for exemption on DOE and each of the existing shippers on the Line within five days of the service date of this decision and certify to the Board that it has done so.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.